

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LEE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

September 22, 1998

No. 201095

Washtenaw Circuit Court

LC No. 96-006144 FH

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury conviction for possession of 50 grams or more, but less than 225 grams of cocaine, MCL 333.7403(1) and (2)(a)(iii); MSA 14.15(7403)(1) and (2)(a)(iii), and his enhanced sentence of twenty to forty years' imprisonment, which reflects his status as a repeat drug offender, MCL 333.7413(2); MSA 14.15(7413)(2). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Limiting our review to the record facts, *People v Hedelsky*, 162 Mich App 382, 397; 412 NW2d 746 (1987), defendant has failed to demonstrate that he was deprived of the effective assistance of trial counsel, *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). To the extent that defendant argues that counsel was ineffective for failing to move to suppress defendant's statement to the police, the argument lacks record support. Defense counsel did move to suppress the statement. To the extent that defendant argues that counsel was ineffective for failing to make a pretrial motion to suppress, the record indicates that defendant's challenge to the voluntariness of his statement lacks merit. *People v Cheatham*, 453 Mich 1, 27-29 (Boyle, J.), 44 (Weaver, J.); 551 NW2d 355 (1996); *People v Leighty*, 161 Mich App 565, 571; 411 NW2d 778 (1987). Counsel cannot be deemed ineffective for failing to undertake a frivolous or futile action. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh